



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Sent via facsimile and U.S. mail

The Honorable Richard Sanders
County Judge
Henderson County
125 N. Prairieville St, Room 100
Athens, Texas 75751

Dear Judge Sanders,

It has come to my attention that a Wisconsin-based organization called the Freedom From Religion Foundation ("FFRF") recently sent you a letter demanding that you remove a nativity scene from the grounds of the Henderson County courthouse. Media reports indicate that this organization has threatened to sue Henderson County if their demands are not met. Those reports also indicate that you intend to keep the nativity scene in place through Christmas, as has been Henderson County's traditional practice for many years. I write to offer my support if the FFRF follows through on its threat to pursue legal action against Henderson County.

While the Texas Attorney General's Office lacks authority to represent the County in court, if the need should arise we can and will file legal briefs supporting the County's authority to allow a nativity scene to be displayed on the courthouse grounds. Earlier this year, the Attorney General's Office took similar legal action to defend Medina Valley I.S.D.'s ability to include student-led prayer in its high school graduation ceremony. In that case, the federal district court initially ordered the school district to forbid prayers at graduation. With our support, the school district appealed the court's misguided and legally flawed decision. The U.S. Court of Appeals for the Fifth Circuit correctly applied the law, overturned the district court's order, and permitted Medina Valley students to freely express their religious beliefs during their graduation ceremony.

The Freedom From Religion Foundation has a long history of attacking entirely constitutional public acknowledgements of our Nation's religious heritage. When FFRF challenged President Obama's 2009 inaugural prayer, I filed a brief defending inaugural prayers—which was joined by the attorneys general from all fifty states—and the FFRF's claims were correctly rejected by the federal courts. Further, when FFRF filed yet another lawsuit challenging the National Day of Prayer, the Texas Attorney General's Office argued that this longstanding tradition is constitutional. Once again, the courts dismissed the FFRF's lawsuit. More recently, when FFRF

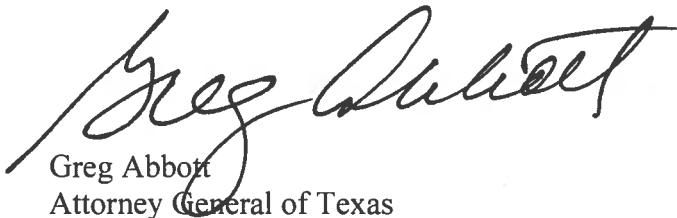
attempted to prevent the Governor of Texas from participating in a prayer rally, my office defended the Governor, and the courts again rejected the FFRF's claims.

Under a proper understanding of the Constitution's Establishment Clause, passive public displays acknowledging our Nation's religious heritage—such as the Ten Commandments monument on the grounds of the Texas Capitol or a nativity scene displayed on public grounds in December—are entirely constitutional. As the Supreme Court has observed, “[w]e are a religious people whose institutions presuppose a Supreme Being.” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). Public acknowledgments of our religious heritage—from the highest seats of national government to the courthouse grounds in Athens, Texas—serve the constitutionally legitimate purpose of “solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society.” *Lynch v. Donnelly*, 465 U.S. 668, 693 (1984) (O'Connor, J., concurring).

Henderson County has no legal obligation to remove a nativity scene from the courthouse grounds during the Christmas season. Should you choose to continue the County's longstanding tradition of displaying a nativity scene, rest assured that the Attorney General's Office stands ready to provide appropriate legal support in the event FFRF takes legal action against Henderson County.

If you have any questions or if we may be of further assistance, please do not hesitate to contact me. Thank you for your service to Henderson County and State of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", written over a horizontal line.

Greg Abbott
Attorney General of Texas